

BACKGROUND PAPER FOR HEARING

BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

IDENTIFIED ISSUES, QUESTIONS FOR THE BOARD AND BACKGROUND CONCERNING ISSUES

PRIOR SUNSET REVIEW: The Board of Vocational Nursing and Psychiatric Technicians (Board) was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) six years ago (1996-97). The JLSRC and the Department of Consumer Affairs (DCA) identified several issues and made the following recommendations: (1) the state should continue the regulation of licensed vocational nurses and psychiatric technicians; (2) the Board of Vocational Nursing and Psychiatric Technicians should continue as the agency responsible for the regulation of these professions; and (3) the composition of the Board should be changed to ensure a public member majority as recommended by the Board.

In September 2002, the Board submitted its required sunset report to the JLSRC. In this report, information of which is provided in Members' binders, the Board described actions it has taken since the Board's prior review. The Board addressed one of the issues presented during its last review by providing for a public majority on its Board. It also implemented a number of programmatic and operational changes and enhancements, including the following outlined in the table below:

MAJOR CHANGES SINCE 1996		
Program Enhancements and/or Operational Efficiencies	Program	Effective Date
1. Fingerprint Program – California Department of Justice (DOJ) criminal history background check required for all applicants for licensure. Prior to that date, the applicants were required to self-disclose their conviction history. The Board determined, however, that many applicants with convictions substantially related to their practice failed to truthfully disclose their conviction history. Consequently, fingerprint record checks were needed.	Enforcement	Jul 1996
2. Citation & Fine Program – Promulgated applicable regulations to authorize the issuance of the Citations & Fines for disciplinary actions that did not necessitate license revocation, suspension or probation.	Enforcement	Jul 1996
3. Self-Reporting of Criminal Convictions on License Renewal Forms – Implemented a new requirement that all licensees must self-report any criminal convictions sustained during the two years immediately preceding their license renewal on their renewal form every two years. The Board did not have the authority in 1996 to retroactively require all of its licensees to submit fingerprint records. Therefore, implementation of this license renewal form certification provides a mechanism to: 1) ascertain if a licensee has sustained any new convictions during the past two years; 2) use the certification statement as evidence that the licensee failed to truthfully disclose his/her conviction history (if a conviction is later reported through the complaint process); and 3) compare the DOJ Subsequent Arrest Reports to the licensee's certification statement.	Enforcement	Jan 1997

MAJOR CHANGES SINCE 1996		
Program Enhancements and/or Operational Efficiencies	Program	Effective Date
4. <u>Information Technology</u> – Developed and implemented an internet website with a wide variety of Board information	Automation	Sep 1997
5. <u>Fingerprint Program</u> – Federal Bureau of Investigation (FBI) criminal history background checks required for all applicants for licensure. Prior to that date, only out-of-state applicants for licensure were required to submit both a DOJ and FBI fingerprint record. Both background checks were required as the DOJ reports only contained California convictions and the FBI reports contained the conviction information for the entire United States.	Enforcement	Jan 1998
6. <u>Information Technology</u> – Conversion to Local Area Network and Department of Consumer Affairs' Wide Area Network.	Automation	Dec 1998
7. <u>Information Technology</u> – Conversion of the PT applicants to the DCA Applicant Tracking System to enable automated cashiering and other related functions (VN applicants converted in 1994).	Automation	Jun 1999
8. <u>Examination Administration</u> – Implemented contract for year-round, statewide-computerized test administration services for the PT Program.	Automation	Jul 1999
9. <u>School Survey Visits</u> – Implemented a new Program Record Survey to increase the efficiency of the school accreditation and survey visit requirements.	Education	Jul 2000
10. <u>Accreditation Process</u> – Implemented a standardized four-year accreditation period and a new provisional accreditation status for school programs that do not consistently meet the requirements of the Board's rules and regulations.	Education	Jul 2000
11. <u>School Program Pass Rates</u> – Implemented regulations to specify that the Board's accredited schools must maintain an annual average pass rate that remains within ten percentage points of the state's annual average pass rate.	Education	Jul 2000
12. <u>Fingerprint Program</u> – Conversion to Applicant Live Scan system to facilitate "electronic" submission of fingerprints instead of using fingerprint cards. This substantially improved the DOJ processing time of criminal record response reports.	Enforcement	Dec 2000
13. <u>Plastic Credit-Card Style Licenses</u> – Implemented contract to convert from paper licenses to credit card style licenses to enhance license security by preventing fraudulent changes easily made to paper licenses.	Enforcement & Licensing	Jan 2001
14. <u>Information Technology</u> – Implemented online license verification on Board's internet web site.	Enforcement & Automation	May 2001
15. <u>Information Technology</u> – The Board is currently working with DCA Office of Information Services to implement major mainframe upgrades.	Automation	2002

The following are unresolved issues pertaining to this Board, or areas of concern for the JLSRC, along with background information concerning the particular issue. There are also questions that staff has asked concerning the particular issue. The Board was provided with these issues and questions and is prepared to address each one if necessary.

CURRENT SUNSET REVIEW ISSUES

BOARD'S AUTHORITY AND ADMINISTRATION ISSUES

ISSUE #1: The strategic plan for the Board may need to be updated to focus on the low level of satisfaction with the way the Board keeps complainants informed about the status of their case and the time it takes to resolve their complaint.

Question #1 for the Board: *Does the Board submit its updated plans annually to the Department for approval through Agency and the Governor's Office? Based on the results of the Consumer Satisfaction Survey, does the Board believe that its is meeting the goals and objectives of their strategic plan? How does the Board annually update their strategic plan and does the Board believe that an in-depth strategic plan is now necessary based on the results of this survey? What immediate actions can the Board take to deal with this low level of consumer satisfaction regarding the handling of their complaints?*

Background: The Board indicates that it updates its Strategic Plan annually to identify the strategic issues and trends impacting the Board and the profession it regulates. It is unclear when the Board last undertook an in-depth strategic planning project to ensure its effectiveness and responsiveness to the public that it serves. As required by the Joint Committee, the Board completed a Consumer Satisfaction Survey to a random sample of complainants chosen over the past four years. There was a low level of satisfaction with complainants regarding the way the Board kept them informed about the status of their case and the time it took to resolve their complaint. However, the Board did receive a higher satisfaction rating for the overall service provided by the Board than most other health-related boards that have been reviewed by the JLSRC.

ISSUE #2: It is unclear when and if the Board believes that regulations or legislation will be necessary to deal with scope of practice issues for vocational nurses and psychiatric technicians.

Question #2 for the Board: *If questions arise regarding the practice of nurses or those certified in an advanced vocational nursing area, how does the Board respond to these inquiries? At what point in time would regulations be appropriate to clarify or interpret a particular area of practice for nurses? When would regulations be inappropriate and legislative changes be required for the scope of practice changes for LVNs?*

Background: An issue has been raised regarding the adoption of the Board of regulations regarding the practice of vocational nursing in this state. The Board has been advised that it does have authority to interpret the licensed vocational nurses (LVNs) scope of practice. However, professional nursing organizations are challenging the Board's authority to interpret its laws governing LVNs and claiming that it is illegally interpreting its statutes and regulations. It is also been argued that the Board's ability to interpret the LVN scope of practice is an underground regulation. In particular, one area of concern has been the practice of LVNs certified in intravenous therapy to administer intravenous (IV) fluids in hemodialysis, pheresis, and blood bank settings.

BUDGETARY ISSUES

ISSUE #3: The Board has experienced insufficient fund reserves and possible fund deficits in the past.

Question #3 for the Board: *Please explain why the Board was facing insufficient fund reserves prior to its recent fee increase? Would six months of fund reserves for the Psychiatric Technician (PT) Program be sufficient rather than being capped at three months?*

Background: The Board claims that prior to January 1, 2000, it had insufficient fund reserves and was facing projected fund deficits annually. At that time professional associations were also opposed to any fee increases, but that in 1998 the Board was able to seek a fee increase but it was vetoed by the Governor. In 2000, however a fee increase was approved and it finally resolved the Board's fund condition. The Board still has a requirement that the PT Program shall not maintain a reserve balance greater than three months of the appropriated operating expenditures of the PT Program in any fiscal year.

ISSUE #4: It is unclear how the Board is counting complaints received especially those categorized as "licensee convictions" and "miscellaneous."

Question #4 for the Board: *Why has the workload of this Board changed so significantly in its enforcement program since its last review in 1996, when it use to receive approximately 270 complaints for the Vocational Nurses (VN) Program and about 130 complaints for the PT Program?*

Background: The Board claims that it has had an "enormous workload increase" with the processing of approximately 1,650 complaints and responding to over 27,000 enforcement inquiries. Complaints appear to be broken down into several categories with complaints received from the public, licensee/professional groups, governmental agencies, and two new categories of "internal – licensee convictions" and "internal – miscellaneous." During its last review in 1996, the Board showed that it received over a period of about four years, about 270 complaints per year for vocational nurses and about 130 complaints for psychiatric technicians. The Board now shows for fiscal year 2001/02, about 1300 complaints received for vocational nurses and 300 complaints for psychiatric technicians. As explained by the Board, enforcement workload has tripled and is directly attributable to the growing number of applicants and licensees with criminal convictions that substantially relate to their scope of practice (e.g., drug and alcohol convictions, burglary, physical and sexual abuse, and petty theft convictions, etc.). The Board now indicates that it has only five analysts to process over 1,650 complaints and respond to over 27,000 enforcement inquiries. In fiscal year 2002/03, the Board requested additional enforcement staff, however, no positions were approved. For fiscal year 2003/04, the Board has again submitted a request for additional enforcement staff but believes approval appears very remote.

VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIAN **PRACTICE ISSUES**

ISSUE #5: It appears as though California is experiencing and will continue to experience a shortage of vocational nurses and psychiatric technicians similar to that of registered nurses.

Question #5 for the Board: *What specific efforts is the Board making to deal with this public health care crisis and what recommendations does the Board have to resolve the current, and prevent the possible shortages of vocational nurses and psychiatric technicians in California?*

Background: As the Board indicates, it has been participating in the Governor's Nurse Workforce Initiative, the Office of Statewide Health Planning & Development Task Force, and the Nursing Workforce Advisory Committee of the Board of Registered Nursing. These efforts are intended to deal with what will be future shortages in the nursing and psychiatric technician profession.

ISSUE #6: This Board currently has no scholarship or loan repayment program similar to that of the Board of Registered Nursing.

Question #6 for the Board: *Is there any reason why the Board could not provide a similar program if statutorily created or reestablish the Board's prior "nursing manpower development program?"*

Background: Registered nurses pay a \$5.00 assessment with their license renewal fees to support a scholarship and loan repayment program. The program's focus is to increase the number of registered nurses working in medically underserved areas and to increase the number of registered nurses from underrepresented ethnic groups. Prior to 1994, the Board administered a program which included providing scholarships and grants to meet living costs, tuition, counseling services, costs of books and uniforms and necessary transportation. This "nursing manpower development program" was repealed in 1994. However, Section 2894 of the Business and Professions Code still indicates that moneys in the Vocational Nursing and Psychiatric Technicians Fund may still be expended to promote nursing education in this state.

ISSUE #7: The Board may be able to collect information upon license renewal to assist in determining workforce needs for vocational nurses and psychiatric technicians.

Question #7 for the Board: *Is there currently information being collected to assess the current practice of vocational nurses and psychiatric technicians? Does the Board currently collect information upon licensure (or upon renewal of a license) about the active status of the licensee and what area they practice or are employed?*

Background: Pursuant to Section 2786 (c), the Board of Registered Nursing is required to perform an analysis of the practice of registered nursing at least every five years, to be used to assist in the determination of required prelicensure nursing program subjects, validation of licensing examination, and assessment of the current practice of nursing. Also, there are other private/public organizations as

well as educational institutions that are conducting similar studies. It is not clear if similar information is being collected regarding vocational nurses and psychiatric technicians.

EDUCATION AND NURSING PROGRAM APPROVAL ISSUES

ISSUE #8: Does the current education system for vocational nurses and psychiatric technicians need to be reformed to increase student access and allow for timely completion of their educational programs?

Question #8 for the Board: *Does this Board believe that there are barriers in the current educational system for vocational nurses and psychiatric technicians? Are there specific reforms that the Board believes are necessary to the educational system for VN and PT programs and what are the best ways to bring this about?*

Background: The Board of Registered Nursing believes that there are barriers in the current educational system that prevent students from enrolling and completing nursing programs in a timely manner. The Board argues that the system needs to be reformed. It is unknown whether similar barriers may exist VN or PT educational programs.

ISSUE #9: Are there ways in which the Board could improve its approval process for VN and PT educational programs and thereby facilitate the approval of more programs?

Question #9 for the Board: *How many programs are rejected by the Board and how many receive provisional accreditation on an annual basis? What barriers do agencies generally face in attempting to implement a VN or PT program? Are there other strategies the Board could use to facilitate the approval process? How does the Board and the BPPVE coordinate their approval process for specific programs?*

Background: The Board approves both VN and PT educational programs. There are currently 101 approved VN programs and 14 PT programs. These programs also undergo a voluntary accreditation by the National League for Nursing (NLN) and are also approved by the Bureau for Private Postsecondary and Vocational Education (BPPVE).

ISSUE #10: It is unclear how the Board plans to facilitate and increase the number of applicants to VN and PT programs.

Question #10 for the Board: *What is the approximate number of applications received for VN and PT programs on each year, how many are admitted into the programs and what is the approximate number of graduates per year? How many impacted programs are there where there are more applicants than slots available for students? Does the Board have any recommendations about how admissions could be increased for VN and PT programs and how the number of students graduating from these programs could be increased?*

Background: The Board seems to indicate that through its participation in the Nursing Workforce Advisory Committee it will facilitate student enrollment in accredited VN and PT program, however, not detail are given as to how this may be brought about.

EXAMINATION ISSUES

ISSUE #11: The Board has been experiencing a declining pass rate for the state-only psychiatric technician's examination.

Question #11 for the Board: *What does the Board believe the problems are related to the declining pass rates for candidates who sit for the psychiatric technicians examination and what recommendations does the Board have to assist both candidates and PT programs to improve their pass rates?*

Background: The pass rate for the national licensing examination for vocational nurses (NCLEX-PN) for the past four years has been around 80%, but the pass rate for the state-only psychiatric technicians examination has declined from a high of around 80% four years ago to a low of 69% this past year.

ISSUE #12: It is unclear how the Board deals with out-of-state and foreign graduates who wish to qualify to sit for PT examination.

Question #12 for the Board: *How does the Board generally deal with out-of-state and foreign graduates since few states or countries have PT programs?*

Background: Since the PT examination is a state-only examination, all out-of-state and foreign graduates are required to pass the examination.

CONTINUING COMPETENCY ISSUE

ISSUE #13: Are there improvements that could be made to the current continuing education programs for vocational nurses and psychiatric technicians?

Question #13 for the Board: *Are there new approaches the Board is considering for the continuing education of vocational nurses or psychiatric technicians?*

Background: In 1998, the Board held public forums for discussion of the question "Should LVNs and PTs be required to demonstrate continued competence in practice as a condition of continued licensure?" Most participants agreed that assessing competence for continued clinical practice is a good idea in theory. Participants did not agree that the Board should be the entity to put this element in place. Many people reported that employers already conduct clinical competency assessments on a regular basis. Consequently, the Board decided that requiring completion of additional clinical competence examinations was not required at this time.

ENFORCEMENT ISSUES

ISSUE #14: It is taking on average about 3.5 years from the time a complaint is filed till final disciplinary action is taken against a vocational nurse and almost 4 years on average for a case involving a psychiatric technician.

Question #14 for the Board: *Please explain why it is taking on average about 3.5 years to complete disciplinary action against a vocational nurse and about 4 years for a psychiatric technician, and why the time frame for the processing and investigation of complaints has increased significantly over the past four years. Is there a current backlog of cases in any phase of the Board's enforcement process?*

Background: The average number of days from receipt of complaint to final disposition of a case involving a vocational nurse ranged from 1209 days in fiscal year 1998/99, to 1114 days in fiscal year 2000/01, and back up to 1279 days in 2001/02. This means that it is taking on average about 3.5 years to pursue disciplinary action against a vocational nurse. The average number of days from receipt of complaint to final disposition of a case involving a psychiatric technician ranged from 1167 days in fiscal year 1998/99, to a high of 1449 in fiscal year 2000/01, and 1391 days in fiscal year 2001/02. This means that it is taking on average about 4 years to pursue disciplinary action against a psychiatric technician. The most significant increases appear to be in the processing of the complaint and investigation phase of the Board's disciplinary process.

ISSUE #15: The Board still has difficulty in collecting cost recovery.

Question #15 for the Board: *Please explain what steps the Board takes to collect outstanding cost recovery orders. Is it appropriate to also include cost recovery where there are "default decisions" and the Board has incurred costs during the investigation and prosecution of the particular case?*

Background: The Board generally includes a pleading for cost recovery pursuant to Business and Professions Code Section 125.3, except for cases which are categorized as "default decisions." The Board has collected up to 40% of cost recovery ordered by the administrative law judge.

DISCLOSURE POLICY ISSUE

ISSUE #16: The Board's Complaint Disclosure Policy may need to be updated because of the Department's recently issued "Recommended Minimum Standards for Consumer Complaint Disclosure."

Question #16 for the Board: *Has the Board considered re-reviewing its Disclosure Policy in light of the Department's recently issued disclosure policy? Under what circumstances and at what point in the process are complaints and disciplinary actions disclosed to the public?*

Background: In accordance with the Information Practices Act and the Public Records Act, it is the Board's policy that the public may receive, upon request, the following information regarding a particular licensee:

- The number of complaints which, after investigation, have been found by the Board to be violations of the licensing law or regulations.
- With respect to each such complaint, the public may be provided with the date of receipt and disposition. The case disposition may be:
 - referred to formal disciplinary action;
 - found to involve a minor violation not in itself meriting disciplinary action;
 - disposed of through settlement, compromise or complaint mediation; or
 - disposed of through any other action, formal or informal.
- Once an Accusation or Statement of Issues is filed, it is public information and may be disclosed upon request.

On July 16, 2002, the Department of Consumer Affairs distributed its “Recommended Minimum Standards for Consumer Complaint Disclosure.” The Board’s Enforcement Committee is scheduled to review this policy and will submit its recommended actions to the Board accordingly.

BOARD, CONSUMER AND LICENSEE USE OF THE INTERNET ISSUE

ISSUE #17: Are there other improvements the Board can make to enhance their internet capabilities?

Question #17 for the Board: *What has the Board done to enhance its internet capabilities so as to provide improved services and better information to consumers and licensees? What other improvements does the Board expect to make in the future?*

Background: The Board has increased its utilization of Internet and computer technology over the past six years to provide better services and information to the public and Board licensees. The following lists those services provided and also outlines other areas which the Board has not yet developed.

Online Consumer Information -- The Board’s internet website has been online since September 1997. The Web page provides information and guidance regarding the Board’s roles, functions, and services, as well as issues and concerns pertaining to healthcare. Consumers may obtain information regarding board activities, such as Board and committee meetings, regulatory hearings, and other public functions. The Board also publishes a semi-annual Disciplinary Action List that is available on the Web site along with information regarding the disciplinary process and how to file a complaint. An online License Lookup system was implemented in April 2001, which enables consumers, employers and licensees to verify the status of an LVN or PT license 24-hours a day, 7 days a week.

Online Business with Consumers & Licensees -- The Board does not conduct online business with consumers or licensees at this time. Although several DCA Boards, Bureaus and Programs were selected to participate in the Governor’s eGovernment Pilot Project for online license renewal, this Board was not selected to participate.

Online Application & License Information -- Licensure and renewal information, as well as address change requirements are available on the Board's Web site. The Board is currently in the process of converting its forms to a format that can be downloaded from the Web site. Currently, the VN application forms and the request for replacement license forms are available on the Web site. The PT application forms and other applicable forms will be added as the conversions are completed. Address changes are not accepted via email at this time, as the Board must have a written document bearing the licensee's official signature in order to change the address of record. However, a downloadable address change form will be available for licensees and applicants to print and mail to the Board.

Online Testing & Examination Services -- The Board does not offer online testing or examination services for initial licensure due to examination security issues. The Board must positively identify each examination applicant via photo and signature bearing identification, signature and fingerprint verification to ensure that the person taking the examination is, in fact, the applicant to which the license will be issued. The Board does not have testing or examination requirements for license renewal.